CRA 1602/94 (2)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 218 ✓ Name जगसाय ✓

Father's name भगवान ✓

Residence कोयपानी ✓ Age 40 ST NO 132/93

Sentenced to आजीवन कारावास एवं रु 500/- ✓ on 6/10/94 ✓

Under section 302 भा.दं.वि. 307 भा.दं.वि. आर्म्स एक्ट 25 (1) (ब) (अ)

(सजा की मांग की गई)

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 6/10/94

2 Date of which copy received 18/11/94

3 Date on which Appeal sent 20/11/94

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 218 Name जगसाय उर्फ भगवानदास

Continued in 89 Jail उपजेल रायगढ़

No. 1068 dated 20/11/94 ✓ 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent Central/Distt./Sub-Jail

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. 2/CJM Rajgarh Dated 20.11.94 198

~~Forwarded to the~~ Submitted to Sessions Judge Rajgarh

C.J.Magistrate

(C. B. Bajpai)
Chief Judicial Magistrate
RAIGARH (M. P.)

Date of receipt in Appliate Court

(P.T.O.)

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(10) (E)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. No. 1602/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. VIJAY. K. SHRIVASTAVA, JJ

07.12.2005

Mr. Shravan K Chandel with Mr. Sudhir Kumar Bajpai, counsel for the appellant.

Mr. G.K. Beriwal, Additional Public Prosecutor with Mr. Ravindra Agarwal, Panel Lawyer for the State.

Oral judgment.

By this criminal appeal through the Superintendent, Sub-jail, Jashpurnagar, District Raigarh appellant Lalsai has questioned the legality of judgment of conviction and sentence dated 6th October, 1994 passed by learned Additional Sessions Judge, Jashpurnagar, District Raigarh in S.T.No.133/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life. The accused/appellant has also been convicted for commission of offence under Section 354 of the I.P.C. and sentenced to undergo rigorous imprisonment for one year.

The prosecution story, in brief, is that on 5.1.1993 deceased Sule Bai lodged a report (Ex.P-4) in the Police Station Kunkuri with the allegations that in the night of 1.1.1993 after taking food she went for sleep, at about 11.00 p.m. the accused/appellant entered her room with an intention to outrage her modesty and started pressing her breast. She refused to oblige accused/appellant and started crying, therefore, accused/appellant after taking out

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matchbox from his pocket set her on fire with the help of stick of matchbox and ran away. On hearing Sule Bai's cries, Dineshram (PW-5), Itwari Bai (PW-7) & Bhineshwar (PW-8) came running to her room and they extinguished the fire with the help of water. On account of fire the sari & undergarments of Sule Bai were burnt and lower part of her body was also burnt. On 2.1.1993 a meeting was convened in the village and accused-Lalsai was asked to make arrangements for treatment of Sule Bai, but he did not make arrangement for her treatment till 2nd, 3rd, & 4th January, 1993. On receiving this report, the police officer registered the F.I.R. and Sule Bai was sent to the Primary Health Centrea, Kunkuri where she was medically examined and doctor prepared the report Ex.P-5. However, on 18.2.1993 Sule Bai died in the Primary Health Centre, Kunkuri. Postmortem was conducted by Dr. Jai Singh Sahu (PW-10) in which he opined that cause of death was cardio respiratory arrest due to 37% burn ranging 2nd to 3rd grade.

The Investigating Officer after completion of investigation filed the charge sheet against the accused/appellant in the Court of learned Judicial Magistrate 1st Class, Jashpurnagar who in turn committed the case to learned Sessions Judge, Raigarh from where learned Additional Sessions Judge, Jashpurnagar has received the case on transfer for trial.

The prosecution in order to prove the offence against the accused/appellant examined 11 witnesses. On the other hand, statement of accused/appellant was recorded under Section 313 of the Cr.P.C. by learned Additional Sessions Judge in which the

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accused/appellant denied the prosecution evidence appearing against him and stated that he had not went to the house of Sule Bai and he has been falsely implicated in the crime.

Learned Additional Sessions Judge, after hearing the Additional Public Prosecutor & counsel for the accused convicted and sentenced the accused/appellant herein in the manner as mentioned above.

We have heard Mr. Chandel with Mr. Bajpai, counsel for the appellant & Mr. Beriwal, Additional Public Prosecutor with Mr. Agarwal, Panel Lawyer for the State.

Learned counsel for the accused/appellant did not dispute the fact that death of Sule Bai was homicidal in nature. Apart from that from the evidence of PW-10 Dr. Jai Singh Sahu and postmortem report (Ex.P-6) it is established that Sule Bai was died on account burn injuries and her death was homicidal in nature.

As far as the involvement of the accused/appellant in crime in question is concerned, deceased Sule Bai herself after receiving burn injuries went to the Police Station Kunkuri, lodged the report (Ex.P-4) and that is in the form of dying declaration relating to the cause of her death in which she has categorically mentioned that accused/appellant herein entered her room in the night about 11pm and tried to outrage her modesty and when she refused to oblige the accused/appellant and raised cries, he took out the matchbox from his pocket and set her on fire with the help of stick of matchbox, as a result of which her Sari and undergarments were burnt and on hearing her cries Dineshram, Bhineshwar & Itwari Bai came and they

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extinguished the fire with the help of water. PW-3 Kotlaram has stated in his evidence that on enquiry the deceased disclosed to him that accused Lalsai entered her room with an intention to outrage her modesty but when she refused, he set her on fire. In the cross-examination, this witness has stated that Sule Bai disclosed this fact to him after 5-6 days from the date of incident. PW-5 Dineshram has stated in his evidence that Sule Bai was his mother and she has died. On the fateful day after celebrating New Year, they were sleeping in their respective rooms, at about 11 p.m. in the night Lalsai entered in the room of his mother, tried to outrage her modesty and on her refusal, the accused set her on fire. Similar was the evidence of PW-6 Jainath, PW-7 Itwari Bai, PW-8 Bhineshwar before whom Sule Bai made the oral dying declaration regarding the fact of setting her on fire by the accused/appellant herein and the above evidence of the witnesses is corroborated by the evidence of Dr. Jai Singh Sahu (PW-10) who medically examined Sule Bai on 5.1.1993 and found that the lower part of the body of Sule Bai was burnt upto 37% and burn injuries were ranging 2nd to 3rd degree. PW-10 Dr. Jai Singh Sahu has further stated that on 19.2.1993 he conducted postmortem on the body of Sule Bai and found that Sule Bai died on account of burn injuries. Postmortem report is Ex.P-6. There is nothing in the cross-examination of these witnesses to show that Sule Bai in order to implicate the accused/appellant in a false case gave the dying declaration. Therefore, the involvement of accused/appellant in the crime in question is established based on the dying declaration and medical evidence.

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Learned counsel for the accused/appellant argued that from the evidence on record it has not been established that the accused had committed the crime with the intention to cause death of Sule Bai. Sule Bai died in the hospital after one month eighteen days from the date of incident. Had the proper treatment given to Sule Bai there was every chance of her survival? Therefore, the offence against the accused/appellant does not travel beyond 304 Part-1 of the I.P.C.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

In order to appreciate the arguments advanced by learned counsel for the parties if we look into the facts & circumstances and evidence adduced in this case, it is established that the accused/appellant entered the room of Sule Bai with the intention to outrage her modesty and when she declined to accede the request of accused Lalsai, he set her on fire with the help of stick of matchbox, as a result of which undergarments & sari of Suli Bai were burnt and lower part of her body was also burnt upto 37%. From the above evidence it is clear that when Suli Bai refused to accede the demand of accused Lalsai, he became furious and set Suli Bai on fire. This conduct shows that intention of the accused/appellant was to finish Suli Bai as he became so furious on account of refusal on the part of Suli Bai to oblige him and therefore, he set her on fire, as a result of which she burnt upto 37%.

Explanation 2 of Section 299 of the I.P.C. is the answer to the arguments of learned counsel for the accused/appellant, which envisages that " *where death is caused by bodily injury, the person*

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who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented." The accused/appellant when set Suli Bai on fire was knowing fully well that setting Suli Bai on fire the death is bound to be there, therefore, from the circumstances it can be inferred that the intention of the accused/appellant was to set Suil Bai on fire for committing her murder. As has been disclosed by the witnesses before whom Sule Bai made the dying declaration that accused Lalsai, in the first instance, tried to outrage the modesty of Sule Bai, pressed her breast and caught her by hands, therefore, offence under Section 354 of the IPC was also made out against him.

In the result, we do not find any ground to interfere with the finding of the trial court. This appeal is devoid of any merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Roshan/-

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